

1 Terri H. Didion, Assistant United States Trustee
 2 State Bar No. CA 133491
 3 Carlos R. Hernandez-Vivoni, Trial Attorney
 4 State Bar No. TX 24096186
 5 Email: *carlos.hernandez-vivoni@usdoj.gov*
 6 Edward M. McDonald Jr., Trial Attorney
 7 State Bar No. NY 4126009
 8 Email: *edward.m.mcdonald@usdoj.gov*

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UNITED STATES DEPARTMENT OF JUSTICE
 Office of the United States Trustee
 300 Las Vegas Boulevard, So., Suite 4300
 Las Vegas, Nevada 89101
 Tel: (702) 388-6600
 Attorneys for the United States Trustee for Region 17
 TRACY HOPE DAVIS

10 **UNITED STATES BANKRUPTCY COURT**

11 **DISTRICT OF NEVADA**

12 In re:

13 **GRASS VALLEY HOLDING LIMITED
 14 PARTNERSHIP,**

15 Debtor.

16 Case No: BK-S-22-14484-ABL
 17 Chapter 11

18 Date: March 1, 2023
 19 Time: 1:30 p.m.
 20 Location: Foley Courtroom 1-Remote
 21 Tel: (669) 254-5252;
 22 Meeting ID: 161 110 6049; Code: 154251#

**MOTION OF THE U.S. TRUSTEE TO DISMISS OR CONVERT CHAPTER 11 CASE
 PURSUANT TO 11 U.S.C. §§ 1112(b) AND (e) AND FEDERAL RULES OF
 BANKRUPTCY PROCEDURE 1017(f) AND 9014 AND RESERVATION OF RIGHTS**

23 To the Honorable AUGUST B. LANDIS, Chief United States Bankruptcy Judge:

24 Tracy Hope Davis, United States Trustee for Region 17 (“U.S. Trustee”), hereby files this

25 Motion of the U.S. Trustee to Dismiss or Convert Chapter 11 Case Pursuant To 11 U.S.C. §§
 26 1112(b) and (e) and Federal Rules of Bankruptcy Procedure 1017(f) and 9014 (“Motion”).¹

27
 28 ¹ Unless otherwise noted: “Section” refers to a section of title 11 of the United States Code, 11
 U.S.C. §§ 101-1532 (as amended, the “Bankruptcy Code”); “FRBP” refers to the Federal Rules of
 Bankruptcy Procedure; FRE refers to the Federal Rules of Evidence; and, “ECF No.” refers to the
 main bankruptcy docket for case number 22-14105-MKN.

1 “Cause” exists to dismiss or convert to Chapter 7 this Chapter 11 case, because Grass
 2 Valley Holding Limited Partnership (“Debtor”) has failed to: (1) appear at the 341 meeting of
 3 creditors without good cause shown; (2) provide information reasonably requested by the U.S.
 4 Trustee and to appear at the initial debtor interview; (3) expeditiously prosecute this case; and, (4)
 5 the amalgam of factors indicates that Debtor has filed this case in bad faith (e.g. Debtor owns only
 6 one encumbered and distressed asset that was set to be foreclosed upon near the time the case was
 7 filed, few unsecured creditors, little or no cash flow, no apparent means of forestalling loss of the
 8 single asset other than bankruptcy, etc.). An additional ground to grant this Motion pursuant to
 9 Section 1112(e) because Debtor failed to file its schedules and statements within the time limits
 10 set by the Federal Rules of Bankruptcy Procedure or by Court order granting an extension.² For
 11 these reasons, the U.S. Trustee has established cause to dismiss or convert this case pursuant to
 12 Section 1112(b) and (e).

13 Consistent with her independent and statutory duties, the U.S. Trustee reserves all rights
 14 with respect to this matter, including, but not limited to her right to take any appropriate action
 15
 16

17 The U.S. Trustee requests that the Court take judicial notice of the pleadings and documents filed
 18 in the Debtor’s case, pursuant to FRBP 9017 and FRE 201. To the extent that the Motion contains
 19 factual assertions predicated upon statements made by Debtor, any of its current or former
 20 affiliates, agents, attorneys, professionals, officers, directors or employees, the U.S. Trustee
 submits that such factual assertions are supported by admissible evidence in the form of
 admissions of a party opponent under FRBP 9017 and FRE 801(d)(2).

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 22 U.S.C. §§ 101-1532 (as amended, the “Bankruptcy Code”); “FRBP” refers to the Federal Rules of
 23 Bankruptcy Procedure; FRE refers to the Federal Rules of Evidence; and, “ECF No.” refers to the
 main bankruptcy docket for case number 22-14484-ABL.

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 25 in the Debtor’s case, pursuant to FRBP 9017 and FRE 201. To the extent that the Motion contains
 26 factual assertions predicated upon statements made by Debtor, any of its current or former
 27 affiliates, agents, attorneys, professionals, officers, directors or employees, the U.S. Trustee
 submits that such factual assertions are supported by admissible evidence in the form of
 admissions of a party opponent under FRBP 9017 and FRE 801(d)(2).

1 under title 11 of the United States Code, the Federal Rules of Bankruptcy Procedure, and the local
 2 bankruptcy rules of the United States Bankruptcy Court.

3 The Motion is supported by the following Memorandum of Points and Authorities.

4 **I. SUMMARY OF THE BANKRUPTCY CASE**

5 **A. Background Facts and Procedural Posture.**

6 1. On December 21, 2022, Debtor commenced this case by filing a voluntary Chapter
 7 11 bankruptcy petition which indicates that Debtor's principal place of business is located at 10530
 8 Eagle Nest St., Las Vegas, NV 89141 (the "Property"). [See ECF No. 1, p. 1 of 5; item 4]. Donald
 9 S. Herman signed the petition as the Debtor's representative. [See ECF No. 1, p. 5 of 5; item 17].

10 2. On December 21, 2022, Debtor also filed Schedules A/B and D, verification of a
 11 creditors matrix and matrix, and an authorization to file bankruptcy. [See ECF Nos. 1-5].

12 3. Debtor's creditor matrix contains only the names and addresses of the Debtor,
 13 Debtor's counsel of record, and two other entities, MTC Financial Inc, DBA Trustee Corps and
 14 Specialized Loan Servicing ("SLS"). [See ECF No. 3, p. 2 of 2].

15 4. Debtor filed this case on the day the Property was to be sold at auction. [See
 16 Declaration of Carla K. Cordero ("Cordero Declaration"), pp. 3-4; ¶16 & Exh. 3].

17 5. The entity page for the Debtor maintained by the Secretary of States for Nevada
 18 indicates that its status is "permanently revoked."³ [See Declaration of Carla K. Cordero
 19 ("Cordero Declaration"), p. 2; ¶6 & Exh. 2].

21 ³ The Nevada Revised Statutes ("NRS") provide that "the Secretary of State shall reinstate any
 22 limited partnership which has forfeited or which forfeits its right to transact business under the
 23 provisions of this chapter and restore to the limited partnership its right to carry on business in this
 24 State, and to exercise its privileges and immunities" if the Nevada limited partnership files the
 25 documents and pays the fees required by NRS 87A.310(1)(a) and (1)(b). See NRS 87A.310(1).
 26 However, the NRS also provides that "[i]f a limited partnership's certificate has been revoked
 27 pursuant to the provisions of this chapter and has remained revoked for a period of 5 years, the
 28 certificate must not be reinstated." See NRS 88.410(4); NRS 87A.310(4). Thus, to be
 permanently revoked, the Debtor's limited partnership certificate must have been revoked for at
 least 5 years. Accordingly, it does not appear that the Debtor has had the ability to transact
 business as a limited partnership in Nevada during that period of time, including at the time that
 the resolutions filed as ECF number 5 were signed by Mr. Herman on December 21, 2022 which
 purport to authorize the Debtor to file this case. [See ECF No. 5].

1 6. On January 23, 2023, more than a month after this case commenced, Debtor filed
 2 Schedules E/F, G and H, and refiled Schedules A/B and D, a statement of financial affairs
 3 (“SOFA”), and a Disclosure of Compensation (Form 2030) as required by FRBP 2016 (“2016
 4 Statement”). [See ECF Nos. 13-16].

5 7. To date, Debtor has failed to file the following documents: Summary of Assets and
 6 Liabilities for Non-Individuals; list of equity security holders; and the List of Creditors Holding
 7 20 Largest Unsecured Claims. [See ECF No. 8; *see generally* Case Docket]. Debtor also failed to
 8 file a motion to extend the deadlines to file its schedules and statements. [See *generally* Case
 9 Docket].

10 8. Debtor’s creditor matrix contains only the names and addresses of the Debtor,
 11 Debtor’s counsel of record, and two other entities, MTC Financial Inc, DBA Trustee Corps and
 12 Specialized Loan Servicing (“SLS”). [See ECF No. 3, p. 2 of 2].

13 9. Debtor’s Schedules, statements, SOFA, and the 2016 Statement provide the
 14 following information:

- 15 • Debtor owns only one asset, real property located at 10530 Eagle Nest St., Las
 16 Vegas, NV 89141 (the “Property”) with a scheduled valued of \$730,000.00;
- 17 • Debtor has no money in accounts, cash on hand, or accounts receivable;
- 18 • Debtor has only one secured creditor, Specialized Loan Servicing, with a disputed
 19 claim on the Property of an unknown value;
- 20 • Debtor has no priority unsecured or non-priority unsecured creditors;
- 21 • Debtor is not a party to any executory contracts or unexpired leases;
- 22 • Debtor has no co-debtors;
- 23 • Debtor’s SOFA lists nothing at all, including gross business or non-business
 24 revenue, except a \$7,500 prepetition payment made by Debtor to the Law Offices of
 25 Michael J. Harker (which is also listed on the 2016 Statement).

26 [See ECF Nos. 2, 3 & 13-16].

1 10. No trustee or official committee currently serves in this case. [See generally case
2 docket].

3 11. On December 22, 2022, the Office of the U.S. Trustee requested that Debtor
4 produce by January 11, 2023, certain information, including evidence of insurance coverage, in
5 advance of an initial debtor interview (“IDI”) that the U.S. Trustee requested that the Debtor’s
6 representative and counsel attend on January 18, 2023. [See Cordero Declaration, p. 3; ¶13].

7 12. Debtor has failed to provide all of the requested documents. [See Cordero
8 Declaration, p. 3; ¶¶14-15].

9 13. Debtor’s representative, Donald S. Herman, failed to appear at the IDIs on
10 January 18 and 23, 2023, although Debtor’s counsel of record did appear. [See Cordero
11 Declaration, pp. 3-4; ¶¶16-18].

12 14. The IDI documents and the time period given for producing those documents are
13 standard for Chapter 11 cases. [See Cordero Declaration, p. 4; ¶20].

14 15. The Section 341 meeting of creditors was held on January 26, 2023, but because
15 Donald S. Herman did not appear, was continued to March 9, 2023. [See ECF Nos. 6 & 18].

16 **II. STATEMENT OF JURISDICTION AND VENUE**

17 16. The Bankruptcy Court has jurisdiction over this bankruptcy case pursuant to 28
18 U.S.C. §§ 1334(a), 1334(b), and 157(b).

19 17. The U.S. Trustee brings this Motion pursuant to her statutory duty to monitor
20 bankruptcy cases under 28 U.S.C. § 586(a)(3).

21 18. The U.S. Trustee has standing to prosecute the Motion pursuant to Sections 307 and
22 1112 and FRBP 1017 and 9014.

23 19. Venue of this case and the contested matter presented by the Motion are proper in
24 this District pursuant to 28 U.S.C. §§ 1408 and 1409.

25 20. Pursuant to LR 9014.2, the U.S. Trustee consents to the entry of final orders or
26 judgment by the bankruptcy judge if it is determined that the bankruptcy judge, absent consent of
27
28

1 the parties, cannot enter final orders or judgment consistent with Article III of the United States
 2 Constitution.

3 **III. MEMORANDUM OF POINTS AND AUTHORITIES**

4 **A. Cause exists under 11 U.S.C. §§ 1112(b)(1) and 1112(b)(4) to convert or
 5 dismiss this bankruptcy case.**

6 21. Section 1112(b)(1) of title 11 of the United States Code provides that:

7 Except as provided in paragraph (2) and subsection (c), on request
 8 . . . the court shall convert a case under this chapter to a case
 9 under chapter 7 or dismiss a case under this chapter, whichever is
 10 in the best interests of creditors and the estate, for cause unless the
 11 court determines that the appointment under section 1104(a) of a
 12 trustee or an examiner is in the best interests of creditors and the
 13 estate.

14 22. Section 1112(b) includes a non-exclusive list of what constitutes "cause;" however,
 15 the court should "consider other factors as they arise, and use its equitable power to reach the
 16 appropriate result." *Pioneer Liquidating Corp. v. U.S. Trustee (In re Consolidated Pioneer
 17 Mortgage Entities)*, 248 B.R. 368, 375 (B.A.P. 9th Cir. 2000) *aff'd*, 264 F.3d 803 (9th Cir. 2001).
 18 The bankruptcy court has broad discretion to determine what constitutes "cause" adequate for
 19 conversion or dismissal under § 1112(b). *Id.*

20 23. As movant, the U.S. Trustee bears the burden of establishing by a preponderance of
 21 the evidence that cause exists. *Sullivan v. Harnisch (In re Sullivan)*, 522 B.R. 604, 614 (B.A.P. 9th
 22 Cir. 2014) (citation omitted). If a bankruptcy court determines that there is cause to convert or
 23 dismiss, it must also: (1) decide whether conversion or dismissal is in the best interests of creditors
 24 and the estate; and (2) identify whether there are unusual circumstances establishing that
 25 conversion or dismissal is not in the best interests of creditors and the estate. *In re Sullivan*, 522
 26 B.R. at 612.

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1 **B. Cause exists under 11 U.S.C. §§ 1112(b)(1) and 1112(b)(4)(G) because Debtor**
 2 **failed to attend the Section 341 meeting of creditors on January 26, 2023.**

3 24. “Cause,” as used in Section 1112(b)(1), is defined in pertinent portions of Section
 4 1112(b)(4) as including (G) failure to attend the meeting of creditors convened under section
 5 341(a) or an examination ordered under rule 2004 of the Federal Rules of Bankruptcy Procedure
 6 without good cause shown by the debtor.” 11 U.S.C. §§ 1112(b)(1) & (b)(4)(G).

7 25. The Debtor failed to appear at the 341 meeting of creditors on January 26, 2023.
 8 [*See* Cordero Declaration, p. 4; ¶22].

9 26. There is no indication that the Court has relieved the Debtor from appearing at the
 10 341 meeting of creditors, nor has the Debtor shown evidence of good cause for failure to attend
 11 the 341 meeting of creditors. [*See generally* Case Docket].

12 27. Accordingly, there is cause to dismiss this bankruptcy case, and the Court should
 13 enter an order dismissing the case pursuant to 11 U.S.C. §§ 1112(b)(1) and (b)(4)(G).

14 **C. Cause exists under 11 U.S.C. §§ 1112(b)(1) and 1112(b)(4)(H) because Debtor**
 15 **failed to provide the IDI documents reasonably requested by the U.S.**
 16 **Trustee and Debtor’s representative failed to appear at the IDIs held on**
 17 **January 18 and 23, 2023.**

18 28. “Cause” under Section 1112(b)(4)(H) states that a case shall be converted or
 19 dismissed if a debtor fails to failure timely to provide information or attend meetings reasonably
 20 requested by the U.S. Trustee. *See* 11 U.S.C. §§ 1112(b)(1) and (b)(4)(H).

21 29. On December 22, 2022, the Office of the U.S. Trustee requested that Debtor
 22 produce by January 11, 2023, certain information, including evidence of insurance coverage, in
 23 advance of an initial debtor interview (“IDI”) that the U.S. Trustee requested that the Debtor’s
 24 representative and counsel attend on January 18, 2023. [*See* Cordero Declaration, p. 3; ¶13].

25 30. Debtor has failed to provide all of the requested documents. [*See* Cordero
 26 Declaration, p. 3; ¶¶14-15].

27 31. Debtor’s representative, Donald S. Herman, failed to appear at the IDIs on
 28 January 18 and 23, 2023, although Debtor’s counsel of record did appear. [*See* Cordero
 29 Declaration, pp. 3-4; ¶¶16-18].

1 32. The IDI documents and the time period given for producing those documents are
 2 standard for Chapter 11 cases. [See Cordero Declaration, p. 4; ¶20].

3 33. Accordingly, the request to produce the IDI documents before that IDI meeting
 4 was reasonable and Debtor had a reasonable time to respond.

5 34. Because the Debtor failed to respond to these reasonable requests for information,
 6 the Court should grant the relief requested in the Motion and enter an order dismissing this case.

7 **D. Cause exists under 11 U.S.C. §§ 1112(b)(1) and 1112(b)(4) because this case
 8 was filed in bad faith.**

9 35. Because the word "includes" precedes the sixteen listed examples of "cause" listed
 10 in 11 U.S.C. § 1112(b)(4), the listed examples are nonexclusive. *See* 11 U.S.C. § 102(3). Bad
 11 faith filing is considered to be an additional "cause" for conversion or dismissal under § 1112. *See,*
 12 *e.g.*, *In re Trident Assocs. Ltd. P'ship*, 52 F.3d 127, 131-132 (6th Cir.1995); *In re Marsch*, 36 F.3d
 13 825, 828 (9th Cir. 1994).

14 36. "The existence of good faith depends on an amalgam of factors and not upon a
 15 specific fact." *Marsch* 36 F.3d at 828 (quoting *In re Arnold*, 806 F.2d 937, 939 (9th Cir.1986)).

16 37. Once a movant establishes the existence of a genuine issue concerning the debtor's
 17 lack of good faith, the debtor then bears the burden of proving good faith by a preponderance of
 18 the evidence. *See In re Yukon Enterprises*, 39 B.R. 919, 921-22 (Bankr. C. D. Ca1. 1984).

19 38. In *In re Stolrow's Inc.*, 84 B.R. 167 (B.A.P. 9th Cir. 1988), the Bankruptcy
 20 Appellate Panel for the Ninth Circuit set forth "the factors which are usually present in cases not
 21 filed in good faith and which may be considered in a motion to convert or dismiss for cause"
 22 including:

- 23 (1) The debtor has only one asset.
- 24 (2) The secured creditors' lien encumbers that asset.
- 25 (3) There are generally no employees except for the principals.
- 26 (4) There is little or no cash flow, and no available sources of income
 27 to sustain a plan of reorganization or to make adequate protection
 28 payments.

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2 (5) There are few, if any, unsecured creditors whose claims are
relatively small.

3 (6) There are allegations of wrongdoing by the debtor or its principals.

4 (7) The debtor is afflicted with the "new debtor syndrome" in which a
one-asset equity has been created or revitalized on the eve of
foreclosure to isolate the insolvent property and its creditors.

5 (8) Bankruptcy offers the only possibility of forestalling loss of the
property.

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7 *Id.* at 171 (citations omitted). Another factor to consider is whether the case is essentially a two
8 party dispute capable of prompt adjudication in state court. *See St. Paul Self Storage Ltd.*
9
10 *Partnership v. Port Auth. (In re St. Paul Self Storage Ltd. Partnership)*, 185 B.R. 580, 583 (B.A.P.
11 9th Cir. Aug. 10, 1995) (citations omitted). "Generally speaking, when factors such as these
12 indicate that a debtor is unreasonably deterring or harassing creditors rather than attempting a
13 speedy and feasible reorganization, the court may conclude that the petition has been filed in bad
14 faith and dismiss it." *Id.* (citations omitted).

15 39. In this case, Debtor's schedules and SOFA indicate that:

16 40. Debtor owns only one asset, the Property;

17 • The Property is subject to a secured claim by one creditor, SLS;

18 • Debtor has no money and no gross business or non-business revenue;

19 • Debtor has no priority or non-priority unsecured debt;

20 • The Property was scheduled to be sold at auction the day this case was commenced,
21 filing bankruptcy triggered the automatic stay preventing that auction from going
22 forward.

23 • The Debtor did not purchase the Property, but received it from Donald S. Herman's
24 family trust for a nominal payment of \$10, thus it is unclear whether the Debtor is
25 liable for the secured debt listed on its Schedule D. [See Cordero Declaration, p.2;
26 ¶5 & Exh. 1].

1 41. Based on Debtor's schedules and statements, this appears to be a two party dispute
 2 between Debtor and SLS. After triggering the automatic stay, Debtor has not shouldered its
 3 responsibilities as a debtor in possession to timely file complete schedules, provide documents or
 4 appear at the IDI, or appear at the Section 341 meeting of creditors.

5 42. In addition, Debtor's status as a Nevada limited partnership has been permanently
 6 revoked and therefore it does not appear that the Debtor had the ability to transact business as a
 7 limited partnership in Nevada at the time that the resolutions were signed that purport to authorize
 8 the Debtor to file this case. [See Declaration of Carla K. Cordero ("Cordero Declaration"),], p. 2;
 9 ¶6 & Exh. 2; *see also* ECF No. 5].

10 43. Therefore, these factors suggest that this case was filed in bad and provides cause to
 11 dismiss or convert this case.

12 **E. Cause Exists under 11 U.S.C. §§ 1112(b)(1) and 1112(b)(4) because Debtor has
 13 Failed to Expediently Prosecute this Bankruptcy Case.**

14 44. Cause to dismiss or convert a Chapter 11 case also includes a debtor's failure to
 15 expeditiously prosecute its case. *In re Babayoff*, 445 B.R. at 79 (holding that because "[a]
 16 debtor's failure to make meaningful and substantive progress toward the confirmation of a plan .
 17 . is nearly always prejudicial to creditors[,] . . . a debtor cannot wallow in chapter 11.")
 18 (quotations and citations omitted); *In re Milford Connecticut Assocs.*, 389 B.R. 303, 309 (Bankr.
 19 D. Conn. 2008) ("Chapter 11 debtors cannot 'have their cake and eat it too'; the extraordinary
 20 relief provided by the bankruptcy laws comes with a price . . . includ[ing] the responsibility to
 21 pursue an open and expeditious reorganization."); *In re Van Brunt*, 46 B.R. 29, 30 (Bankr. W.D.
 22 Wisc. 1984) ("The Chapter 11 debtor is a fiduciary of his creditors. . . and is obligated to
 23 prosecute his bankruptcy proceeding in an expeditious manner.") (citations omitted).

24 45. This case was filed more than a month ago. [See ECF No. 1]. Debtor did not file
 25 its Schedule E/F, G and H, and its SOFA until January 23, 2023 and has failed to file its
 26 summary of schedules, List of Top 20 Unsecured Creditors, or its list of equity owners. Debtor
 27 also failed to move for or secure an order to extend the filing deadline. [See Cordero
 28 Declaration]. Debtor has failed to produce the IDI documents reasonably requested by the U.S.

1 Trustee, and Debtor's representative has failed to appear twice at the IDI or to appear at the
 2 Section 341 meeting of creditors. [See Cordero Declaration]. In addition, counsel of record has
 3 failed to file a motion to be employed. Accordingly, Debtor has failed to expeditiously prosecute
 4 this case.

5 46. Given Debtor's failure to expeditiously prosecute this case as a fiduciary to its
 6 estate, cause exists to dismiss Debtor's case, or convert Debtor's case to Chapter 7.

7 **F. Debtor's failure to file all documents required by Section 521(a)(1) within 15
 8 days of the petition date also provides grounds to dismiss this case pursuant to
 9 11 U.S.C. § 1112(e).**

10 47. Section 1112(e) provides, *inter alia*, that the Court may, upon the request of the
 11 United States Trustee, convert a case to one under Chapter 7, or dismiss a case, if the Debtor
 12 fails to file:

13 [W]ithin fifteen days after the filing of the petition commencing such
 14 case or such additional time as the court may allow, the information
 15 required by paragraph (1) of section 521 (a), including a list
 16 containing the names and addresses of the holders of the twenty
 17 largest unsecured claims (or of all unsecured claims if there are
 18 fewer than twenty unsecured claims), and the approximate dollar
 19 amounts of each of such claims.

20 11 U.S.C. § 1112(e)(emphasis added).

21 48. Under Section 521(a)(1), a debtor is required to file a list of creditors, and "unless
 22 the court orders otherwise" various schedules, statements, and other detailed financial
 23 information. *See* 11 U.S.C. § 521(a)(1).

24 49. A review of the case docket does not show that the court has waived Debtor's
 25 duties under Section 521(a)(1). [See generally Case Docket]. The first business day that was
 26 fifteen days after the petition date was Thursday, January 5, 2023. [See Cordero Declaration, p.
 27 2; ¶7].

28 50. Debtor failed to file Schedules E/F, G, and H, or its SOFA before the 14 day
 29 filing deadline in Fed. R. Bankr. P. 1007(c) passed and Debtor failed to move to extend that
 30 deadline before it elapsed. *See* Fed. R. Bankr. P. 1007(c).

1 51. Debtor failed to file Schedules E/F, G, H, and its statement of financial affairs until
 2 January 23, 2023, thirty-three days after this case commenced. [See ECF Nos. 1, 2, 7, 8 & 13-
 3 14; *see generally* Case Docket]. Debtor has still failed to file the List of Creditors Holding 20
 4 Largest Unsecured Claims (Form 4) containing the name, address and claim of the creditors that
 5 hold the 20 largest unsecured claims. [*Id.*]

6 52. Accordingly, Debtor has failed to file the required documents within the time
 7 frame set forth in 11 U.S.C. § 1112(e) or to secure an extension to do so. Therefore, the Court
 8 should dismiss this case.

9 **G. Once cause is established under 11 U.S.C. § 1112(b)(1), the Debtor has the**
 10 **burden of establishing all elements of the statutory defenses available under**
 11 **11 U.S.C. § 1112(b)(2).⁴**

12 53. Once "cause" is established, the burden then shifts to the debtor to demonstrate that
 13 §1112(b)(2) precludes relief under §1112(b)(1). *Sanders v. U.S. Trustee (In re Sanders)*, 2013
 14 Bankr. LEXIS 4681 at *18-19 (B.A.P. 9th Cir. April 11, 2013). The only exception to conversion
 15 or dismissal would be if the bankruptcy court specifically identifies "unusual circumstances . . .
 16 that establish that such relief is not in the best interest of creditors and the estate." *See* 11 U.S.C.
 17 §1112(b)(1). For the exception to apply: (a) the debtor must prove and the bankruptcy court must
 18 "find and specifically identify" that "unusual circumstances" exist to show that conversion or
 19 dismissal is not in the best interest of creditors and the estate; and (b) the debtor must prove that
 20 the cause for conversion or dismissal was reasonably justified, and that the basis for conversion or
 21 dismissal can be "cured" within a reasonable time. *See Warren v. Young (In re Warren)*, 2015
 22 Bankr. LEXIS 1775 at *11-12 (B.A.P. 9th Cir. May 28, 2015). As noted, the debtor bears the
 23 burden of proving unusual circumstances are present in the case that render conversion or
 24 dismissal is not in the best interest of creditors or the estate. *In re Sanders*, 2013 Bankr. LEXIS
 25 4681 at *18-19.

26
 27 ⁴ Section 1112(b) applies to Section 1112(b)(1), not to Section 1112(e). *See* 11 U.S.C. §
 28 1112(b)(2).

1 54. The record does not disclose any “unusual circumstances” that would establish
2 justification against granting the relief requested in the Motion.

3 55. In determining whether to convert a case from Chapter 11 to Chapter 7 or dismiss
4 it, a bankruptcy court must consider the interests of all creditors. *Shulkin Hutton, Inc., P.S. v.*
5 *Treiger (In re Owens)*, 552 F.3d 958, 961 (9th Cir. 2009). The Court has broad discretion to
6 determine whether dismissal or conversion of a Chapter 11 case is in the best interest of the
7 creditors and the estate, driven by case-specific circumstances. *Cf., In re Staff Inv. Co.*, 146 B.R.
8 256, 260 (Bankr. E.D. Cal. 1992) (finding conversion in lieu of dismissal is warranted, where
9 debtor betrays an intention to re-file a new bankruptcy case following dismissal of the current case,
10 so to obtain a new automatic stay).

11 56. Debtor has not provided any evidence that it owns anything other than the Property,
12 which the lender can foreclose upon outside of bankruptcy. Therefore, this case should be
13 dismissed. *See Rand v. Porsche Fin. Servs. (In re Rand)*, 2010 Bankr. LEXIS 5076, 2010 WL
14 6259960, *10 n.14 (B.A.P. 9th Cir. Dec. 7, 2010) (internal citations omitted) (identifying ten
15 factors courts have used to determine whether dismissal or conversion is in the best interests of
16 creditors and the estate under §1112(b)(1)).

17 57. In the alternative, given the lack of complete schedules and the possibility that
18 Debtor may have unsecured creditors that a Chapter 7 trustee might be able to pay through a sale
19 of the Property, the U.S. Trustee does not object to the Court converting this case to a case under
20 Chapter 7, if the Court ultimately determines that such relief is in the best interests of Debtor’s
21 creditors.

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1 **IV. CONCLUSION**

2 **WHEREFORE**, the U.S. Trustee moves the Court to enter an order (a) granting the
3 Motion; (b) dismissing this case, or in the alternative, converting it to Chapter 7, if the Court
4 ultimately determines that such relief is in the best interests of the Debtors' creditors and the
5 estate; and (c) granting such other relief as is just under the circumstances.

6 Dated: January 27, 2023

7 Respectfully Submitted,

8 TRACY HOPE DAVIS
9 UNITED STATES TRUSTEE

10 By: /s/ Edward M. McDonald Jr.
11 Edward M. McDonald Jr., Trial Attorney

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11 **EXHIBIT A**
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17 **PROPOSED FORM OF
18 ORDER**
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7 Terri H. Didion, Assistant United States Trustee

State Bar No. CA 133491

8 Carlos R. Hernandez-Vivoni, Trial Attorney

9 State Bar No. TX 24096186

10 Email: *carlos.hernandez-vivoni@usdoj.gov*

11 Edward M. McDonald Jr., Trial Attorney

12 State Bar No. NY 4126009

13 Email: *edward.m.mcdonald@usdoj.gov*

14 **UNITED STATES DEPARTMENT OF JUSTICE**

15 Office of the United States Trustee

16 300 Las Vegas Boulevard, So., Suite 4300

17 Las Vegas, Nevada 89101

18 Tel: (702) 388-6600

19 Attorneys for the United States Trustee for Region 17

20 TRACY HOPE DAVIS

21 **UNITED STATES BANKRUPTCY COURT**

22 **DISTRICT OF NEVADA**

23 In re:

24 **GRASS VALLEY HOLDING LIMITED
PARTNERSHIP,**

25 Debtor.

26 Case No: BK-S-22-14484-ABL
Chapter 11

27 Date: March 1, 2023

28 Time: 1:30 p.m.

Location: Foley Courtroom 1-Remote

29 **ORDER DISMISSING CASE**

30 Based on the *Motion of the U.S. Trustee to Dismiss or Convert Chapter 11 Case*,

31 Pursuant to 11 U.S.C. §§ 1112(b) and (e) and Federal Rules of Bankruptcy Procedure 1017(f)

32 and 9014 and *Reservation of Rights* (the “Motion”), the Cordero declaration with attached

33 exhibits filed in support of the Motion, the hearing held on March 1, 2023 (appearances noted

1 on the record), the Court having stated on the record its findings of fact and conclusions of law,
2 which are incorporated herein pursuant to Federal Rules of Bankruptcy Procedure 9014(c) and
3 7052, and Federal Rule of Civil Procedure 52, with good cause having been shown,
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5 **IT IS HEREBY ORDERED** that the Motion is **GRANTED**; and,

6 **IT IS FURTHER ORDERED** that this case is **DISMISSED**.

7 **IT IS SO ORDERED.**

8 Submitted by:
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10 TRACY HOPE DAVIS
11 UNITED STATES TRUSTEE

12 By: /s/ Edward M. McDonald Jr.
13 Edward M. McDonald Jr., Esq.
14 United States Department of Justice
Attorney for the United States Trustee

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2 RULE 9021 DECLARATION
34 In accordance with LR 9021, counsel submitting this document certifies that the order
5 accurately reflects the Court's ruling and that:6 The court has waived the requirement of approval under LR 9021(b)(1).
7 No party appeared at the hearing or filed an objection to the motion.
8 I have delivered a copy of this proposed order to all counsel who appeared at the
9 hearing, and any unrepresented parties who appeared at the hearing, and each has
10 approved or disapproved the order, or failed to respond, as indicated below:11

| APPROVE/DISAPPROVE | |
|---|--|
| <hr/> | |
| MICHAEL J. HARKER 2901 EL CAMINO AVE., #200 LAS VEGAS, NV 89102 | |

16 *Counsel for the Debtor*17
18 I certify that this is a case under Chapter 7 or 13, that I served a copy of this order with
19 the motion pursuant to LR 9014(g), and that no party has objected to the form or content
of the order.

20 I declare under penalty of perjury that the foregoing is true and correct.

21 By: /s/ Edward M. McDonald Jr.
22 Edward M. McDonald Jr., Esq.
23 United States Department of Justice
24 Attorney for the United States Trustee
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